

LEGISLATIVE ASSEMBLY

Standing Committee on Parliamentary Privilege and Ethics

August 2010

Report on Inquiry into the Draft Constitution
(Disclosures by Members) Amendment
(De Facto Relationships) Regulation 2010



**REPORT ON INQUIRY INTO THE
DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS)
AMENDMENT (DE FACTO RELATIONSHIPS) REGULATION 2010**

TABLE OF CONTENTS:

MEMBERSHIP & STAFF 2

CHAIRMAN'S FOREWORD 3

CHAPTER 1: Initiation of the Inquiry 5

CHAPTER 2: The Consultation Draft *Constitution (Disclosures by Members)*
Amendment (De Facto Relationships) Regulation 2010 7

APPENDIX 1: Excerpt from the Relationships Register Act 2010 9

APPENDIX 2: The Consultation Draft *Constitution (Disclosures by Members)*
Amendment (De Facto Relationships) Regulation 2010 11

APPENDIX 3: Excerpts of Minutes of Meetings of the Committee 18

MEMBERSHIP AND STAFF

Chairman Mr Paul Pearce MP, Member for Coogee

Members Hon Richard Amery MP, Deputy-Chairman, Member for Mount Druitt
Mr Malcolm Kerr MP, Member for Cronulla
Mr Gerard Martin MP, Member for Bathurst
Ms Lylea McMahon, MP, Member for Shellharbour
Ms Clover Moore MP, Member for Sydney
Hon Frank Terenzini MP, Member for Maitland*
Mr John Turner MP, Member for Myall Lakes
Hon Graham West MP, Member for Campbelltown#

**discharged from Committee, 24 June 2010*

appointed to Committee, 24 June 2010, V&P 203.

Staff Ms Ronda Miller, Clerk to the Committee

Contact Details Standing Committee on Parliamentary Privilege and Ethics
Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Telephone 02 9230 2225
Facsimile 02 9230 2828
E-mail ethics@parliament.nsw.gov.au
URL www.parliament.nsw.gov.au

CHAIRMAN'S FOREWORD

This report reviews a minor proposed amendment to the *Constitution (Disclosures by Members) Regulation 1983*. The proposed amendment to the Regulation is consequential to the Relationships Register Act 2010, which was assented to on 19 May 2010 and commenced on 1 July 2010.

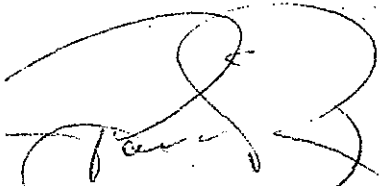
The Relationships Register Act 2010 expands the definition of "de facto relationship" to include persons in a "registered relationship".

The Committee does not oppose the proposed amendment to the *Constitution (Disclosures by Members) Regulation*.

At the time of tabling this report, the Committee has commenced a comprehensive review of the Code of Conduct for Members of Parliament, as required under section 72E of the Independent Commission Against Corruption Act 1990. The review will also include the scheme for Members' registration of interests. Comment is currently being sought from Members and other interest groups. Further information about the inquiry can be found on the Committee's website on www.parliament.nsw.gov.au

The Committee welcomes discussion about the continued relevance and effectiveness of the scheme for disclosure of member's interests.

I commend the report to the House.



Paul Pearce, MP
Committee Chairman

CHAPTER 1: INITIATION OF THE INQUIRY

The Committee received early notification of the proposal for a relationships register and its impact on the Members' registration of interests scheme. On 20 April 2010, the New South Wales Department of Justice and Attorney General wrote to the Standing Committee on Parliamentary Privilege and Ethics, seeking comment from the Committee regarding a bill proposed to be introduced by the Attorney General, to establish a relationships register in New South Wales. One consequence of the proposed legislation would be an expansion of certain disclosure obligations of members, in that the definitions of "relative" and "de facto partner" in the *Constitution (Disclosures by Members) Regulation* would extend to include a partner in a registered relationship.

On 9 June 2010 a copy of the *Consultation Draft Constitution (Disclosures by Members) Amendment (De Facto) Regulation 2010* was formally forwarded to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics for review (see Appendix 1). Under section 14A (5) of the Constitution Act 1902 the Governor is required, before making a regulation relating to the disclosure of interests by Members, to provide any Parliamentary committee established for the purpose of considering the proposed regulation an opportunity to comment on the regulation, and is to take into account any such representations.

The House resolved to forward the draft Regulation was forwarded to the Committee on Parliamentary Privilege and Ethics for review. The Privileges Committee of the Legislative Council was also asked to concurrently consider the proposed amending regulation and report to the Legislative Council.

The Committees were requested to report on the draft *Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010* by 23 June 2010.

CHAPTER 2: THE DRAFT CONSTITUTION (DISCLOSURES BY MEMBERS) AMENDMENT (DE FACTO RELATIONSHIPS) REGULATION 2010

2.1 Previous changes to the Constitution (Disclosures by Members) Regulation 1983

The scheme for disclosure of Members' interests was established in 1983 by the Constitution (Disclosures by Members) Regulation 1983 ("the Regulation"). The regulatory framework of the scheme continued unchanged until 2007, in which year the obligation to lodge a return was increased from annually to every six months. Other amendments made in March 2007 introduced discretionary returns, and a new obligation for additional information about any clients benefiting from Member's secondary employment. Further amendments in 2008 improved the layout of the form used to register interests; clarified the definition of "public company"; and changed the registration requirement for Members' interests in real property, so that disclosure of the suburb or area, or purpose, of a place of residence was required, rather than a street address or title particulars.

The Committee's report of June 2008, entitled "Further review of the *Consultation Draft Constitution (Disclosures by Members) Amendment Regulation 2008*", also noted that the Miscellaneous Acts Amendment (Relationships) Bill 2008 would have the effect of expanding the definition of "spouse" in the Regulation to read "spouse or de facto partner". The Regulation thereby ensured equality in the treatment of same sex and opposite sex de facto relationships.

2.2 The changes to be introduced as a result of the Registered Relationships Act 2010

The principles of the Registered Relations Act will be incorporated into the Member's registration of interests scheme through the provisions of the *Consultation Draft Constitution (Disclosures by Members) Amendment (De Facto) Regulation 2010*. The text of the draft Regulation can be found at Appendix 1.

The proposed amendment to the definition of "relative" and "de facto partner" will affect clauses 10, 11 and 14 of the Regulation.

2.22 Definitions of relative and de facto partner are relevant to gifts, contributions to travel, and debts.

Clauses 10, 11 and 14 of the Regulation provide that particulars of gifts and contributions to travel received by a Member from the Member's spouse or de facto partner, or certain relatives of the Member's spouse or de facto partner, are not required to be disclosed by a Member. Under the proposed amending legislation, this exemption will be extended to encompass persons who have registered a relationship with the Member, on the relationships register.

Appendix 2 indicates, by marked up text, the proposed changes to the principal Regulation.

3. Outcome of the Committee's review of the proposed amendment

The Committee, having examined the *Consultation Draft Constitution (Disclosures by Members) Regulation - Amendment (De Facto Relationships) Regulation 2010*, notes that Members of Parliament have had the opportunity to comment on the

.. principle contained in the amendment, in the course of debate on the Relationships Register Bill which took place in the Legislative Assembly on 11 May 2010.

Recommendation:

Accordingly, the Committee resolved, on the motion of Mr Kerr, seconded Mr Martin, **THAT** the Chair advise the Government that the Consultation Draft Constitution (Disclosures by Members) Regulation - Amendment (De Facto Relationships) Regulation 2010, as forwarded, is not opposed by the Committee.

Appendix 1 Excerpt from the Relationships Register Act 2010

Section 5 of the Relationships Register Act 2010 provides that adults (defined as over the age of 18) may register a relationship on the following grounds.

5 Eligibility for registration

- (1) Two adults who are in a relationship as a couple, regardless of their sex, may apply to the Registrar for registration of their relationship.
- (2) A relationship cannot be registered unless at least one of the adults resides in New South Wales.
- (3) A relationship cannot be registered if:
 - (a) either adult is married, or
 - (b) either adult is registered under this Act or a corresponding law as being in a registered relationship or an interstate registered relationship, or
 - (c) either adult is in a relationship as a couple with another person, or
 - (d) the adults are related by family.
- (4) Two adults are *related by family* if:
 - (a) one is the child (including an adopted child) of the other, or
 - (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent), or
 - (c) they have a parent in common (including an adoptive parent of either or both of them).
- (5) Subsection (4) applies:
 - (a) even if an adoption has been declared void or is of no effect, and
 - (b) to adoptions under the law of any place (whether in or out of Australia) relating to the adoption of children.

The Committee noted that there is a 28 day cooling off period to have a relationship registered, and a 90 day cooling off period in order to revoke a registered relationship.

consultation draft



New South Wales

Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010

under the

Constitution Act 1902

Her Excellency the Governor, with the advice of the Executive Council and in compliance with the provisions of section 14A (5) of the *Constitution Act 1902*, has made the following Regulation under the *Constitution Act 1902*.

Premier

Explanatory note

The object of this Regulation is to amend the *Constitution (Disclosures by Members) Regulation 1983* to update references to de facto partners in that Regulation to include persons who are in a registered relationship, or an interstate registered relationship, under the *Relationships Register Act 2010* by adopting the definition of *de facto partner* in the *Interpretation Act 1987*. The effect of this change is that exemptions from disclosure requirements under that Regulation that apply to gifts received from relatives, travel contributions made by relatives and debts owed to relatives will extend to such de facto partners.

This Regulation is made under the *Constitution Act 1902*, including section 14A.

consultation draft

Clause 1 Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010

Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010

under the

Constitution Act 1902

1 Name of Regulation

This Regulation is the *Constitution (Disclosures by Members) Amendment (De Facto Relationships) Regulation 2010*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Amendment of Constitution (Disclosures by Members) Regulation 1983

(1) Clause 7 Interpretation: Part 3

Omit the definition of *de facto partner* from clause 7 (1).

(2) Clause 7 (1)

Insert after the definition of *relative*:

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

2.2 Interpretation Act 1987 No 15

Section 21C

Insert after section 21B:

21C References to de facto partners and de facto relationships

(1) **Meaning of “de facto partner”**

For the purposes of any Act or instrument, a person is the *de facto partner* of another person (whether of the same sex or a different sex) if:

- (a) the person is in a registered relationship or interstate registered relationship with the other person within the meaning of the *Relationships Register Act 2010*, or
- (b) the person is in a de facto relationship with the other person.

(2) **Meaning of “de facto relationship”**

For the purposes of any Act or instrument, a person is in a *de facto relationship* with another person if:

- (a) they have a relationship as a couple living together, and
- (b) they are not married to one another or related by family.

A de facto relationship can exist even if one of the persons is legally married to someone else or in a registered relationship or interstate registered relationship with someone else.

(3) **Determination of “relationship as a couple”**

In determining whether 2 persons have a relationship as a couple for the purposes of subsection (2), all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:

- (a) the duration of the relationship,
- (b) the nature and extent of their common residence,
- (c) whether a sexual relationship exists,
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them,
- (e) the ownership, use and acquisition of property,
- (f) the degree of mutual commitment to a shared life,
- (g) the care and support of children,

- (h) the performance of household duties,
- (i) the reputation and public aspects of the relationship.

No particular finding in relation to any of those matters is necessary in determining whether 2 persons have a relationship as a couple.

(4) **Meaning of "related by family"**

For the purposes of subsection (2), 2 persons are *related by family* if:

- (a) one is the child (including an adopted child) of the other, or
- (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent), or
- (c) they have a parent in common (including an adoptive parent of either or both of them).

This subsection applies:

- (a) even if an adoption has been declared void or is of no effect, and
- (b) to adoptions under the law of any place (whether in or out of Australia) relating to the adoption of children.

2.3 Property (Relationships) Act 1984 No 147

Section 3 Definitions

Insert after section 3 (3):

- (4) For the purposes of this Act, a registered relationship or an interstate registered relationship, within the meaning of the *Relationships Register Act 2010*, is a de facto relationship.

10 Gifts

- (1) A Member shall disclose in an ordinary return:
 - (a) the description of each gift received by the Member at any time during the ordinary return period, and
 - (b) the name and address of the donor of each such gift.
- (2) A gift received by a Member need not be disclosed in an ordinary return if:
 - (a) the amount of the gift did not exceed \$500 unless:
 - (i) the gift was 1 of 2 or more gifts made by 1 person at any time during the ordinary return period, and
 - (ii) the amount of those 2 or more gifts exceeded, in the aggregate, \$500,
 - (b) the gift was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding and Disclosures Act 1981*, or
 - (c) the donor was a relative of the Member.**
- (3) For the purposes of this clause, the amount of a gift comprising property other than money shall be deemed to be an amount equal to the value of the property.

11 Contributions to travel

- (1) A Member shall disclose in an ordinary return:
 - (a) the name and address of each person who made any financial or other contribution to any travel undertaken by the Member at any time during the ordinary return period,
 - (b) the dates on which the travel was undertaken, and
 - (c) the names of the States, Territories of the Commonwealth and overseas countries in which the travel was undertaken.
- (2) A financial or other contribution to any travel undertaken by a Member need not be disclosed in an ordinary return if:
 - (a) the contribution was made from public funds (including a contribution arising from travel on free passes issued under any Act or from travel in government vehicles),

- (b) the contribution was made by a relative of the Member,
 - (c) the contribution was made in the ordinary course of any occupation of the Member which is not related to his or her duties as a Member,
 - (d) the amount of the contribution did not exceed \$250 unless:
 - (i) the contribution was 1 of 2 or more contributions made by 1 person at any time during the ordinary return period, and
 - (ii) the amount of those 2 or more contributions exceeded, in the aggregate, \$250,
 - (e) the contribution was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
 - (f) the contribution was made by a political party of which he or she was a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable him or her to represent the party within Australia.
- (3) For the purposes of this clause, the amount of a contribution (other than a financial contribution) shall be deemed to be an amount equal to the value of the contribution.
-

14 Debts

- (1) A Member shall disclose in a primary return and an ordinary return the name and address of each person to whom the Member was liable to pay any debt:
 - (a) in the case of a primary return—on the primary return date, or
 - (b) in the case of an ordinary return—at any time during the ordinary return period.
- (2) A liability to pay a debt shall be disclosed by a Member in a primary return and an ordinary return whether or not the amount, or any part of the amount, to be paid was due and payable on the primary return date or at any time during the ordinary return period, as the case may be.

(3) A liability to pay a debt need not be disclosed by a Member in a primary return or an ordinary return if:

(a) the amount to be paid did not exceed \$500 on the primary return date or at any time during the ordinary return period, as the case may be, unless:

(i) the debt was 1 of 2 or more debts which the Member was liable to pay to 1 person on the primary return date or at any time during the ordinary return period, as the case may be, and

(ii) the amounts to be paid exceeded, in the aggregate, \$500.

(b) the Member was liable to pay the debt to a relative.

(c) in the case of a debt arising from a loan of money—the Member was liable to pay the debt to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or

(d) in the case of a debt arising from the supply of goods or services:

(i) the goods or services were supplied in the period of 12 months immediately preceding the primary return date or were supplied during the ordinary return period, as the case may be, or

(ii) the goods or services were supplied in the ordinary course of any occupation of the Member which is not related to his or her duties as a Member.

Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics (no.13)

Held at 9.30 am; 24 June 2010, in Room 1254 Parliament House

Members Present:

Mr Pearce MP (Chair)

Mr Amery MP

Mr Kerr MP

Mr Martin MP

Ms Moore MP

Mr J. H. Turner MP

Apologies: Ms McMahon MP, Mr Terenzini MP

In attendance: Ms Ronda Miller

1. Minutes of last meeting held 20 May 2010

The minutes of the meeting held on 20 May 2010 which had been circulated, were adopted on the motion of Mr Turner, seconded by Mr Amery.

.....

3. Correspondence from the Department of Premier and Cabinet dated 9 June 2010, enclosing a Consultation Draft Constitution (Disclosures by Members) Regulation - Amendment (De Facto Relationships) Regulation 2010 for consideration by the Committee (copy previously circulated).

The Committee noted that it had previously considered the proposal to amend the Constitution (Disclosures by Members) Regulation to provide for expanding the definition of "de facto" under the Regulation to include relationships registered under the Relationships Register Act 2010. A copy of the Chair's prior response to the Attorney General's Department, dated 21 April 2010, was circulated.

The Committee examined the Consultation Draft Amendment Regulation and noted that it was consistent with the proposal already considered. The Committee resolved, on the motion of Mr Kerr, seconded Mr Martin, that the Chair advise the Department of Premier and Cabinet that the Draft Amendment Regulation, as forwarded, was not opposed by the Committee, and that a short report be prepared for tabling in the House.

.....